

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION No.
)	
FORD MOTOR COMPANY,)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

STATEMENT OF THE CASE

This is a civil action brought pursuant to the Clean Air Act, ("CAA"), 42 U.S.C. §§ 7401 - 7671q, against Defendant for civil penalties and injunctive relief for violations of the industrial refrigerant repair, testing, record-keeping, and reporting regulations at 40 C.F.R. Part 82, Subpart F, §§ 82.150 - 82.166, ("Recycling and Emission Reduction"), promulgated pursuant to Subchapter VI of the CAA ("Stratospheric Ozone Protection"), 42 U.S.C. §§ 7671-7671q, at its assembly plant located in Hazelwood, Missouri.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b).
2. Venue is proper in the Eastern District of Missouri, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b), and 1395(a), because it is the judicial district (i) in which Defendant does business, (ii) in which the events giving rise to the claims occurred, and (iii) in which the violations of the CAA occurred.

NOTICE

3. Notice of the commencement of this action has been given to the air pollution control agency for the state where Defendant's facility is located. 42 U.S.C. § 7413(b).

DEFENDANT

4. Defendant Ford Motor Company, Inc., is incorporated under the laws of the State of Delaware.
5. Defendant owns and operates an assembly plant in Hazelwood, Missouri, hereinafter referred to as the "Facility." Defendant is, or at all times relevant to this matter was, the owner and operator of the Facility at which Defendant produced automobiles and other vehicles for distribution nationwide.
6. Defendant is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Complaint that are defined in the CAA, or in the regulations promulgated pursuant to the CAA, will have the meaning assigned to them in the CAA and regulations. Whenever the terms set forth below are used in this complaint, the following definitions apply:

- a. “Appliance” means a device as defined at 40 C.F.R. § 82.152.
- b. “Defendant” means Ford Motor Company.
- c. “EPA” means the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- d. “Facility” means the Hazelwood, Missouri Plant.
- e. “Industrial Process Refrigeration” or “IPR” Appliance means any appliance that is directly linked to the manufacturing process and contains more than fifty (50) pounds of refrigerant.
- f. “Parties” mean the United States and Defendant.
- g. “United States” means the United States of America, acting on behalf of EPA.

STATUTORY AND REGULATORY PROVISIONS

8. Subchapter VI of the CAA, 42 U.S.C. §§ 7671-7671q (“Stratospheric Ozone Protection”) implements the Montreal Protocol on Substances that deplete the Ozone Layer and mandates the elimination or control of emissions of substances that are known or suspected to cause or significantly contribute to harmful effects on the stratospheric ozone layer, referred to as

Class I and Class II substances.

9. Section 608 of Subchapter VI, 42 U.S.C. § 7671g (“National Recycling and Emission Reduction Program”) requires the EPA to promulgate regulations establishing standards and requirements regarding the use and disposal of Class I and Class II ozone-depleting substances during the service, repair, or disposal of appliances and industrial process refrigeration.

10. EPA promulgated the regulations required by Section 608, codified at 40 C.F.R. Part 82, Subpart F, §§ 82.150- 82.166, (“Recycling and Emissions Reduction”) (hereinafter “Subpart F Regulations”), on May 14, 1993. 58 Fed. Reg. 28,712.

11. Section 608 of the CAA states, “it shall be unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration, to knowingly vent or otherwise release or dispose of any such class I or class II substance used as a refrigerant in such appliance (or industrial process refrigeration) in a manner which permits such substance to enter the environment.” 42 U.S.C. § 7671g(c)(1). The Subpart F Regulations reiterate this prohibition, effective June 14, 1993. 40 C.F.R. § 82.154(a).

12. The Subpart F Regulations require leak repair for IPR Appliances containing more than fifty (50) pounds of refrigerant. These regulations are aimed at reducing emissions of Class I and Class II ozone-depleting substances in the atmosphere.

13. Pursuant to 40 C.F.R. § 82.156(i)(9), the owner or operator must repair leaks within thirty (30) days after discovery, or within thirty (30) days after such leaks should have been discovered if the owner or operator intentionally shielded itself from information which would have revealed a leak.

14. Pursuant to 40 C.F.R. § 82.156, where the annualized leak rate from an IPR Appliance exceeds 35%, the owner or operator must repair the leak within thirty (30) days (120 days if the owner or operator cannot get a necessary part or if an industrial process shutdown, as defined by the Subpart F Regulations, is needed to repair the Appliance). 40 C.F.R. § 82.156(i)(2).

15. Pursuant to 40 C.F.R. § 82.156(i)(3), if leak repair is attempted, the owner or operator must then perform an initial verification leak check on the subject Appliance. A follow-up verification leak test must be performed within thirty (30) days of the initial verification test. 40 C.F.R. § 82.156(i)(3).

16. If leak repair has not been successfully completed within thirty (30) days, the owner or operator must replace or retrofit the Appliance. 40 C.F.R. § 82.156(i)(3)(ii). The owner or operator is required to develop a retrofit or replacement plan within thirty (30) days and to implement the plan within one year. 40 C.F.R. § 82.156(i)(6).

17. Pursuant to 40 C.F.R. § 82.156(i)(3)(iii), the owner or operator must notify the EPA within thirty (30) days (in accordance with 40 C.F.R. § 82.166(n)) in the event the follow-up verification reveals that the repairs were not successful.

18. Pursuant to 40 C.F.R. § 82.166(n), the owner or operator of an IPR Appliance must maintain on-site and report to the EPA information relevant to the affected appliance, including: the identification of the industrial process facility; the leak rate; the method used to determine the leak rate; the date an excessive leak rate was discovered; the location and extent of leaks; the date and type of repair work that has been completed; and any plan to complete the retrofit or replacement of the system.

19. Section 113(a)(3) of the CAA authorizes the Administrator to commence a civil action in federal district court against any person who has violated any requirement or prohibition of Subchapter VI ("Stratospheric Ozone-Protection" [inclusive of Section 608]), including a requirement of any rule promulgated under the Act (which includes the Subpart F Regulations). 42 U.S.C. § 7413(a)(3)(C).

20. Section 113(b) of the CAA authorizes the assessment of civil penalties not to exceed \$25,000 per day for each violation of Section 608 of the CAA, 42 U.S.C. § 7671g.

21. Violations that occurred between January 30, 1997, and March 15, 2004, are subject to civil penalties of up to \$27,500 per day for each violation. See 40 C.F.R. § 19.4.

GENERAL ALLEGATIONS

22. Defendant has been, at all times relevant to this complaint, the "owner or operator," as those terms are used in 40 C.F.R. Part 82, Subpart F, §§ 82.150 - 82.166, of the Facility.

23. Defendant has been, at all times relevant to this complaint, an "owner or operator" of units which constitute IPR Appliances, as described in 40 C.F.R. § 82.152.

24. Defendant is a "person," as defined at Section 302(e) of the CAA, 42 U.S.C. § 7602(e) and 40 C.F.R. § 82.152, and within the meaning ascribed under Section 113 of the CAA, 42 U.S.C. § 7413.

25. At all times relevant to this complaint, Defendant used HCFC-22, also known as R-22, in its Facility's IPR Appliances, one of which – Air Dryer #4 – is the subject of this complaint. HCFC-22 (hereinafter "Refrigerant") is a Class II substance.

26. Air Dryer #4 is an "IPR Appliance" within the meaning of 40 C.F.R. § 82.152.

27. Leak rates for Air Dryer #4 varied from approximately 35% to 816% between July 26, 2002 and February 1, 2003, in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(2)

28. At all times relevant to this complaint, the full charge of Refrigerant required for Air Dryer #4 at Defendant's Facility was more than fifty (50) pounds.

FIRST CLAIM FOR RELIEF

[VIOLATIONS OF SECTION 608 OF THE CAA, 40 C.F.R. § 82.156(i)(2) AND § 82.156(i)(9)]
(Failure to Repair Leak - Industrial Process Refrigeration Appliance)

29. Paragraphs 1 through 28 are realleged and incorporated herein by reference.

30. On one or more occasions since 2001, Defendant failed to successfully repair Air Dryer #4 within the appropriate time frame. Each failure to repair was a violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(2) and § 82.156(i)(9), subjecting Defendant to the imposition of civil penalties not to exceed \$27,500 per day of each violation.

SECOND CLAIM FOR RELIEF

[VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(3)]
(Failure to Conduct Initial Verification Leak Test)

31. Paragraphs 1 through 28 are realleged and incorporated herein by reference.

32. Defendant failed to perform one or more initial verification leak tests, as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3) on Air Dryer #4.

33. Defendant's failure to perform initial verification leak tests on an IPR Appliance at the Facility was in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R.

§ 82.156(i)(3), and subjects Defendant to the imposition of civil penalties not to exceed \$27,500 per day of each violation.

THIRD CLAIM FOR RELIEF

[VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(3)]
(Failure to Conduct Follow-up Verification Leak Test)

34. Paragraphs 1 through 28 are realleged and incorporated herein by reference.

35. Defendant failed to perform one or more follow-up verification leak tests as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3), on Air Dryer #4.

36. Defendant's failure to perform follow-up verification leak tests on an IPR Appliance at the Facility was in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3), and subjects Defendant to the imposition of civil penalties not to exceed \$27,500 per day of each violation.

FOURTH CLAIM FOR RELIEF

[VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(3)(ii)]
(Failure to Retrofit or Retire Appliances within one year)

37. Paragraphs 1 through 28 are realleged and incorporated herein by reference.

38. Defendant failed to retrofit or retire Air Dryer #4, or otherwise comply with the requirements of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3)(ii), within one year after a follow-up verification test was required and would have shown that repair attempts were unsuccessful.

39. Defendant's failure to retrofit or retire a leaking IPR Appliance within one year

after a follow-up verification test should have indicated repairs to the IPR Appliance were not successfully completed, was a violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3)(ii), and subjects Defendant to the imposition of civil penalties not to exceed \$27,500 per day of each violation.

FIFTH CLAIM FOR RELIEF

[VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(6)]
(Failure to Develop Retrofit or Retirement Plan)

40. Paragraphs 1 through 28 are realleged and incorporated herein by reference.

41. Defendant failed to develop a written, one-year retrofit or retirement plan for the Air Dryer #4 as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(6).

42. Defendant's failure to develop a written, one-year retrofit or retirement plan for a leaking IPR Appliance was in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(6), and subjects Defendant to the imposition of civil penalties not to exceed \$27,500 per day of each violation.

SIXTH CLAIM FOR RELIEF

[VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(3)(iii)]
(Failure to Notify EPA of Failed Follow-Up Verification)

43. Paragraphs 1 through 28 are realleged and incorporated herein by reference.

44. Defendant failed to notify EPA that Air Dryer #4 failed one or more follow-up verification tests as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3)(iii).

45. Defendant's failure to notify EPA of the failure of one or more follow-up verification tests, was in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3)(iii), and subjects Defendant to the imposition of civil penalties not to exceed \$27,500 per day for each violation occurring after January 30, 1997.

SEVENTH CLAIM FOR RELIEF
[VIOLATION OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.166(n)]
(Failure to Report the Leak Rate of Appliances)

46. Paragraphs 1 through 28 are realleged and incorporated herein by reference.

47. Defendant failed to report to EPA, and maintain on-site, information, records and reports detailing the leak rate of Air Dryer #4, the method used to determine the leak rate, the date a violative leak was discovered, the location and extent of the leak, and the date and type of repair work performed as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166(n).

48. Defendant's failure to report to EPA, and maintain on-site, information, records and reports detailing the leak rate of an IPR Appliance, the method used to determine the leak rate, the date a violative leak rate was discovered, the location and extent of the leak, and the date and type of repair work performed was in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166(n); therefore, Defendant is subject to the imposition of civil penalties up to \$27,500 per day of each violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, prays the Court:

1. Enjoin Defendant from operating its Facility in violation of Subchapter VI of the CAA ("Stratospheric Ozone Protection"), 42 U.S.C. §§ 7671-7671q, and regulations promulgated thereafter, 40 C.F.R. Part 82, Subpart F;
2. Assess civil penalties against Defendant of not more than \$27,500 per day for each violation or failure to comply with the Subpart F Regulations and the Clean Air Act; and
3. Grant the United States such other and further relief as the Court deems appropriate.

Respectfully Submitted,

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